

**CITY OF BIRMINGHAM
BOARD OF ETHICS AGENDA
JUNE 15, 2022
MUNICIPAL BUILDING, 151 MARTIN
2:00 PM**

I. CALL TO ORDER

Chairperson John Schrot

II. ROLL CALL

Alexandria Bingham, City Clerk

III. APPROVAL OF MINUTES

A. Approval of minutes of November 16, 2021

IV. UNFINISHED BUSINESS

None

VI. NEW BUSINESS

- A. Consideration of Advisory Opinion Request 2022-01 – Requested by City Manager Thomas M. Markus Re. Samuel Oh on the Triangle District Corridor Improvement Authority
- B. Consideration of Advisory Opinion Request 2022-02 - Requested by City Manager Thomas M. Markus Re. Bert Koseck on the Planning Board

VII. PUBLIC COMMENT

VIII. ADJOURN

Should you wish to participate, you are invited to attend the meeting in person or virtually through ZOOM: <https://us06web.zoom.us/j/99656852194> Meeting ID: 996 5685 2194
You may also present your written statement to the Board of Ethics, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the meeting.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

I, Alexandria Bingham, the duly appointed City Clerk for the City of Birmingham, certify this meeting notice was posted at all four entrances into the Municipal Building, and to www.bhamgov.org on May 18, 2022.

Alexandria Bingham

**City of Birmingham
Board of Ethics Minutes
November 16, 2021
151 Martin, Birmingham**

I. CALL TO ORDER

Chair Fierro-Share called the meeting to order at 2:00 p.m.

II. ROLL CALL

Present: Sophie Fierro-Share, Chair
James Robb, Board Member
John Schrot, Board Member

Absent: None

Administration: City Clerk Bingham, City Manager Tom Markus, City Attorney Mary Kucharek

III. APPROVAL OF MINUTES

MOTION: Motion by Mr. Robb, seconded by Mr. Schrot:
To approve the minutes of March 29, 2021 as submitted.

VOICE VOTE: Ayes, Mr. Robb
Mr. Schrot
Chair Fierro-Share
Nays, None

IV. UNFINISHED BUSINESS

None.

V. NEW BUSINESS

A. Selection of new chair

MOTION: Motion by Chair Fierro-Share, seconded by Mr. Robb:
To nominate Mr. Schrot as the new Chair of the Board of Ethics.

VOICE VOTE: Ayes, Chair Fierro-Share
Mr. Robb
Mr. Schrot
Nays, None

B. Consideration of Advisory Opinion Request 2021-04

Chair Schrot explained the process that would be followed for reviewing Case 2021-04. He then explained the matter to be reviewed. Chair Schrot asked his fellow Board members to opine as

to whether the Board was solely acting as the City Manager's designee in this matter, or whether the Board should also be treating this matter as an ethics complaint.

The Board concurred that that the public's speaking time should be limited to three minutes each.

Mr. Robb said the Board's responsibility in this matter was solely to act as the City Manager's designee. He noted there was no ethics complaint filed and no request for an ethics advisory opinion. He stated the City Manager requested the Board review the matter according to the City's policy for racial and ethnic conflict, and not under the ethics ordinance. Mr. Robb said he concurred with Chair Schrot's statement that the Board was being tasked with determining whether there were sufficient allegations to warrant the Board to conduct hearings or issue an advisory opinion.

Ms. Fierro-Share noted that while this discussion would not be conducted under the guidance of the ethics ordinance, the Board would undertake a careful review.

Chair Schrot concurred with Mr. Robb in saying that this matter did not constitute an ethics ordinance complaint, noting that the requisite documentation for an ethics complaint had not been submitted. He noted that this matter, rather, pertained to an alleged incident involving racial or ethnic conflict. He concurred with Ms. Fierro-Share's statement as well.

MOTION: Motion by Mr. Robb, seconded by Ms. Fierro-Share:

To accept the designation from City Manager Markus to address advisory opinion request 2021-04.

VOICE VOTE:	Ayes,	Mr. Robb Ms. Fierro-Share Chair Schrot
	Nays,	None

Chair Schrot said the Board should first clarify what the Plan for the City of Birmingham's Response to Incidents Involving Racial or Ethnic Conflict (the Plan) means by an 'incident'.

Mr. Robb noted the term was not defined in the Plan and said the Board should understand 'incident' in accordance with its customary usage.

The Chair said the Board should then review the complaint, determine whether they believed an incident involving racial or ethnic conflict occurred, and should determine whether a hearing or advisory opinion to the City Manager was warranted.

Mr. Robb thanked the members of the public for submitting letters regarding this case. He noted that there was no allegation that Commissioner Baller violated the ethics ordinance, that he made a statement that was facially antisemitic, or that an incident involving racial or ethnic conflict occurred. Mr. Robb stated the allegation against Commissioner Baller was that he used language that is typically used by people who circulate antisemitic tropes. He noted that the allegation did not say Commissioner Baller used an antisemitic trope.

Mr. Robb explained that he utilized resources from the Anti-Defamation League (ADL) and the Louis D. Brandeis Center (Brandeis Center) in his review of this case. He stated that a fact sheet

from the Brandeis Center lists elements of antisemitic discourse, and said that certain kinds of references to money or wealth can constitute antisemitic discourse. He said the Brandeis Center specified that those references usually more specifically include allegations of greed at the expense of others, which he said was significant.

Mr. Robb said he was not inclined to find that Commissioner Baller used an antisemitic trope. He stated that the words in question are commonly used in political discourse and in wider society. Mr. Robb said he has used those words and heard them used in his career as a business lawyer. He said he was unable to find an indication that Commissioner Baller used the words in any way other than how those words are commonly used in politics or business on the basis of the record.

Mr. Robb stated that prior to Carolyn Normandin's letter on behalf of the ADL, he had been unaware that the donors to Mr. Bloom's campaign, as named by Commissioner Baller, were of the Jewish faith. Mr. Robb noted that said donors were not identified as such by Commissioner Baller. Mr. Robb stated that the discourse was not improper since knowing who supports a candidate allows voters to know a bit more about the candidate. Mr. Robb stated that criticism of political candidates for fundraising practices is not uncommon and is not limited to candidates of any creed, ethnicity or background.

Based on this information, Mr. Robb contended that the Board would have to extrapolate from Commissioner Baller's writings to establish that an incident involving racial or ethnic conflict occurred. Mr. Robb said he did not see that there were sufficient allegations of complaint to warrant the Board conducting hearings or offering an advisory opinion on whether an incident of racial or ethnic conflict occurred.

Ms. Fierro-Share said that one can never be sure how one's words will be interpreted, and that this case may be an example of that. She said there are some words that are unequivocally racist, and other words that are used in many contexts and are not inherently ethnically derogatory. Finding Commissioner Baller's language to be in the latter category, Ms. Fierro-Share said she agreed with Mr. Robb that the Board could not establish that Commissioner Baller had racially or ethnically biased intentions, or that an incident involving racial or ethnic conflict had occurred.

Ms. Fierro-Share said she did feel that the speech in question was hurtful and unfortunate. She said that it hurt many people in the process.

Chair Schrot stated that he also looked at the ADL's resources to get a better sense of the allegations and antisemitic tropes. He concurred with Mr. Robb and Ms. Fierro-Share that an incident of racial or ethnic conflict did not occur in this case. Based on this, he also concurred with his colleagues that there was no basis for holding a hearing or issuing an advisory opinion. He said it seemed that this matter would be best addressed at the ballot box. He noted that when people donate to a political campaign it does become a matter of public record.

Chair Schrot then noted that the ethics ordinance has requirements for the behavior of public officials. He noted that this was addressed in the Board's Case 2020-01 opinion as well.

Chair Schrot, Mr. Robb, and Ms. Fierro-Share said the City should pursue the Board's recommendations from Case 2020-01 to establish a social media policy and to provide guidance to public officials on when they should offer a disclaimer for their communications. There was Board consensus that having clearer policies would better allow the Board to determine when those policies have been violated.

Chair Schrot said he did not profess to know the legalities of devising a social media policy, and that the City Attorney would have to review that. He provided documents regarding potential policies to his fellow Board members, and said he would also provide them to the City Attorney and the City Clerk to include in the record.

Mr. Robb said the Board could also potentially assist in crafting a social media policy and guidance on when public officials should offer disclaimers.

Chair Schrot invited public comment.

VI. PUBLIC COMMENT

David Bloom, Ed Schulak, Ann Gross, Donna Klein, Paul Reagan, and Jane Schulak expressed the harm they saw done by Commissioner Baller's writings both in email and on social media.

Mr. Bloom explained that while he was not accusing Commissioner Baller of being antisemitic, he was accusing him of using antisemitic tropes to undermine Mr. Bloom's 2021 campaign for the office of City Commissioner.

Mr. Schulak and Ms. Gross said that the Board's understanding of its task was perhaps too narrow, and that the Board should review Commissioner Baller's conduct vis-a-vis his written communications more generally.

Ms. Klein said that Commissioner Baller had not reformed his approach to writing after Case 2020-01. She asserted that Commissioner Baller's statements seemed to be dog-whistles, which are racially- or ethnically-biased views meant to be imperceptible to the general public but recognizable to those who hold similarly biased views. She said the City should be taking the correspondence from the ADL more seriously, and noted that while a number of Jewish residents were expressing concern, three non-Jewish Board members were finding that there was no racial or ethnic incident. She said it should be sufficient to know that Commissioner Baller's correspondence was offensive to some residents. She encouraged the Board to rethink their stance.

Mr. Reagan said that if a separate complaint were raised regarding this matter under the ethics ordinance, he hoped that the Board would review the matter without prejudice as to their findings in the current case. He said that developing a social media policy would be superfluous since the ethics ordinance already adequately deals with public officials' communications. He asserted that the lines between being a Commissioner and citizen have been intentionally confused in Commissioner Baller's conduct and that the roles needed to be more clearly disentangled.

Ms. Schulak said Commissioner Baller was showing disrespect for his office, the City and the public. She said this incident did not represent how City officials nor the City should conduct itself.

VII. ADJOURN

Mr. Robb thanked the public for attending and for offering their perspective.

MOTION: Motion by Mr. Robb, seconded by Ms. Fierro-Share:
To adjourn the meeting at 3:12 p.m.

VOICE VOTE:	Ayes,	Mr. Robb Ms. Fierro-Share Chair Schrot
	Nays,	None

Alexandria Bingham, City Clerk

DRAFT



Case No. _____
(Assigned by clerk)

REQUEST FOR ADVISORY OPINION

The Procedural Rules of the Board of Ethics allow a city official or employee, the City Commission, or another city commission, board or committee, as defined in the Code of Ethics ("the requesting party"), to request an advisory opinion as to whether the requesting party's conduct or anticipated conduct, or that of a city official, employee, commission, board or committee under the requesting party's authority, conforms to the Code of Ethics. The party whose conduct is sought to be reviewed, if it is someone other than the requesting party, is called the "subject party."

All advisory opinions will be communicated to the city commission and will be published on the city's website at www.bhamgov.org.

Written requests are subject to disclosure under the Freedom of Information Act.

Name Samuel Oh Phone Number (313) 339-8308

Address 820 Hazel St., Birmingham, MI 48009
(Number, Street, City, State, Zip)

Position or Board (If Applicable) Triangle District Corridor Improvement Authority

- A. State each question upon which an opinion is desired. Attach additional sheets of paper if the space provided below is not sufficient.
- B. State all of the facts giving rise to each question presented.
- C. If available, provide all relevant statutory provisions, case law, prior opinions of the Ethics Board, and other authorities.

NOTE: Although the foregoing criteria are subject to exception when the circumstances warrant, a request which does not meet these criteria may be returned and the requestor asked to resubmit the request in an appropriate form.

Please return requests to: City Clerk's Office, City of Birmingham
151 Martin, P.O. Box 3001, Birmingham, MI 48012

Revised 8/16/12

FOR OFFICE USE ONLY

Accepted by _____ Date _____



April 25, 2022

City of Birmingham Ethics Board
City of Birmingham
151 Martin Street
Birmingham, MI 48009

Re: Advisory Opinion

Dear Members of the Board:

On Friday, March 25, 2022 it came to my attention that Mr. Oh, who is a member of the Corridor Improvement Authority Triangle District Development Board, hosted on the social media site change.org, a request for a petition to be signed by 100 persons for revision of the Triangle District Master Plan, which can be found in Attachment 1. Mr. Oh begins his petition request with the statement, "My name is Samuel Oh, and I am a member of the Corridor Improvement Authority (Triangle District Development) Board." Mr. Oh is indeed a member of this Board as demonstrated in Attachments 2, 3, 4 and 5.

In reviewing the Code of Ethics, I am contacting the Ethics Board of the City of Birmingham to request an Advisory Opinion regarding the conduct of Mr. Oh. Sec. 2-320(3), makes it clear that one is not to use a public office for personal gain. Further, recognizing Sec. 2-321 which states:

"City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be above reproach."

Mr. Oh is a City official pursuant to Section 2-322, which states:

"*City official or employee* means a person elected, appointed or otherwise serving in any capacity with the city in any position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty."

I believe the Code of Ethics has been written to ensure that every person acting on behalf of the City always does so with the utmost integrity and not have even the appearance of impropriety. I am concerned that Mr. Oh is using his title as a Triangle District Development Board



member to pass around a petition for revision of the Birmingham Triangle Development Master Plan, thereby using his position as a member of the Board, duly appointed by the Commission, and as such may be in violation of Sec. 2-321, Sec. 2-323(1), (3), (4) and (5). His statements at change.org are fraught with inaccuracies and, therefore, a concern to the City, and thereby in potential violation of Sec. 2-323(5) of the Birmingham Code of Ethics. Furthermore, Sec. 2-324(a)(2) states:

"(2) No official or employee of the city shall represent his or her personal opinion as that of the city."

By proclamation of this social media site and the circulating of the petition he could be using his Board membership to sound as though he is acting in an official position and performing an official action of the Board. Likewise, in violation of Sec. 2-324(a)(8), by using his official position, as he stated at the beginning of the paragraph, in order to secure and request signatures on his petition, he is using his official capacity to advance his personal position. It could be argued that he may also be in violation of Sec. 2-324(a)(9)b. in that he is acting in a way that is not in compliance with the duty of his Board, but instead is utilizing his position in order to act against the Triangle District Board's plan, for which he has been sworn to represent and make decisions on behalf of the Board.

Also, I have concerns regarding Mr. Oh's actions at a recent meeting. At the Planning Board meeting, which was held on March 9, 2022, Mr. Oh made comments regarding the process and makeup of the Birmingham Triangle District Corridor Improvement Authority Board (of which he is a member) along with potential impacts of rezoning on the neighborhood. Please find the Planning Board Minutes of March 9, 2022 as Attachment 6. In this statement, Mr. Oh made multiple erroneous statements of the Board's makeup which brings about more issues also causing potential ethic violations. Please review attachment 7, which is the City Clerk's memo to me on March 15, 2022 detailing the correct information regarding the Board and a transcript of Mr. Oh's full statement. You will also find Attachment 8, which is the City Manager's report offered to the City Commission on March 28, 2022, wherein I had to "set the record straight" for the City Commission for Mr. Oh's misstatements.

By having this misinformation stated to the world, Mr. Oh is potentially in violation of Sec. 2-323(5), which states:

"It is the intention of section 2-324 below that city officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

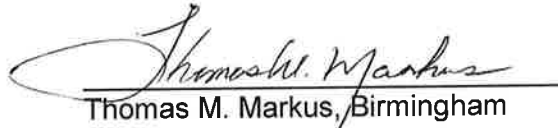
(5) Affecting adversely the confidence of the public or the integrity of the city government."



In conclusion, I bring the aforementioned facts to the Ethics Board requesting an Advisory Opinion as to whether or not sections of the Birmingham City Code of Ethics have been potentially violated by Mr. Oh's actions.

I look forward to any questions you may have, and I will make myself available for a meeting as requested.

I declare the foregoing information is true and accurate to the best of my knowledge.



Thomas M. Markus, Birmingham
City Manager

tmarkus@bhamgov.org

(248) 530-1809

Date: 2-27-22

Attachments:

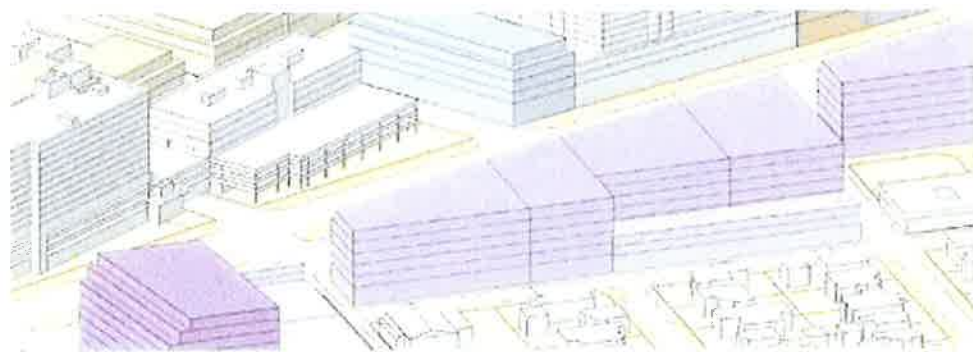
1. Social Media Post and Petition Circulated by Mr. Oh
2. Application by Mr. Oh for City Board or Committee
3. Affidavit and Disclosure Statement by Mr. Oh
4. Affirmation of Support by Mr. Oh
5. Sworn Oath of Office by Mr. Oh
6. Planning Board Minutes of March 9, 2022
7. Clerks Memo to City Manager of March 15, 2022
8. City Manager's Report with Clarifications Pertaining to The Triangle District

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Revision of Triangle District Master Plan



heights:

development 56'
development 68'
development 80'

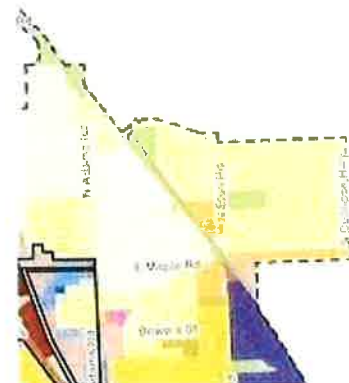
Max allowable heights:

MU-3 MFR 5-story development - 60'
MU-5 SF 6-story development - 82'
MU-7 9-story development - 115'

iting Development Potential in Neighboring Overlays.



ASF-3 SF 2-story development
R2 MFR 2-story development
MU-3 MFR 5-story development
MU-5 SF 6-story development
MU-7 9-story development



Revision of Triangle District Master Plan

47 have signed. Let's get to 100!



At 100 signatures, this petition is more likely to be featured in recommendations!



At 100 signatures, this petition is more likely to be featured in recommendations!



[Samuel Oh](#) started this petition

Fellow Triangle District neighbors,

My name is Samuel Oh and I am a member of the Corridor Improvement Authority (Triangle District Development) board.

You may be aware that a Triangle District Redevelopment Plan has been created and approved on a provisional basis and will be going through final approval soon. See attached photos for diagram and mass render of the proposed plan.

As a fellow resident, I believe that there are many aspects of this plan that would be detrimental to our neighborhood community. The plan calls for significant commercial development which includes multi story parking structures and buildings as tall as 7-9 stories (including some 4 story structure that would bump up right against our homes).

I have created a petition asking for the Redevelopment Master Plan to be revised (requested modifications are detailed in the petition). Please consider signing the petition and encouraging your neighbors and family members to sign as well. I believe by partnering together we can impact and shape the future of our community.

If you have any questions or need additional information, I can be reached at Samuel.e.oh@gmail.com.

— **PETITION BEGINS HERE** —

MARCH 2022 PETITION FOR REVISION OF THE BIRMINGHAM TRIANGLE DISTRICT DEVELOPMENT MASTER PLAN

We, the undersigned residents of the City of Birmingham, petition the Birmingham City Council and Planning Board to make modifications to the current Triangle District Development Master Plan as outlined below:

- 1) Create step back provisions on all commercial buildings and structures that would be adjacent to or facing residential areas.
- 2) Modify the planned commercial / residential transition zones to include more open space.
- 3) Include creation of a neighborhood playground / dog park within a transition zone.
- 4) Include traffic mitigation as part of the master plan for safety and walkability of the many school aged children who live in the community.

Sign this petition

47 have signed. Let's get to 100!



At 100 signatures, this petition is more likely to be featured in recommendations!



At 100 signatures, this petition is more likely to be **featured in recommendations!**

Sign this petition

First name

Last name

Email

Hazel Park, 48030
United States

☒ Display my name and comment on this petition

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English (United States) ▼



OFFICE USE ONLY
Meets Requirements? Yes No
Will Attend / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. **NOTE:** Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

Specific Category/Vacancy on Board PRESIDENT OWNER (see back of this form for information)
RECONSTRUCTION

Name SAMUEL OH

Phone 202-339-8308

Residential Address 220 HAZEL ST.

Email SAMUEL.OH@F.MAIL.UWM

Residential City, Zip BIRMINGHAM, MI, 48009

Length of Residence 2 YES

Business Address _____

Occupation FAMILY OFFICE MANAGER

Business City, Zip _____

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

TRIANGLE DISTRICT PRESIDENT. I WANT TO END LAND BANKING IN THE DISTRICT. WE NEED TO BUILD OUT THREE SPACES FOR USE AND PURPOSE. USE YOUR RELATED EMPLOYMENT EXPERIENCE 24 BILLION \$/YR RE RECURRENT AND INVESTMENT FOR FORTUNE 100 COMPANY.

List your related community activities RECENTLY FWD FOR BOE IN BIRMINGHAM

List your related educational experience MASTERS ARCH/RE DEVELOPMENT (U.P.M)

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: NO

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? YES

Signature of Applicant _____

Date 11/10/20

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carol@bhamgov.org or by fax to 248-330.1260. Updated 12/02/18



AFFIDAVIT AND DISCLOSURE STATEMENT

According to section 2-326 of the Birmingham City Code, "Immediately following an election, employment or appointment of a City official or employee, the City Clerk shall provide the individual with an Affidavit and Disclosure Statement form. Within twenty days after election, appointment, employment or any change in the facts set forth in the City official's or employee's previously filed Affidavit and Disclosure Statement, all City officials and employees shall file with the City clerk an Affidavit and Disclosure Statement." Chapter 2 – Effective April 28, 2003

Date 12/19/2020

Name Samuel Oh

Position/Board Triangle District Corridor Improvement Authority

1. To the best of your knowledge do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land contiguous to the City of Birmingham, or in any area to which the City of Birmingham is party?
Yes
2. If your answer to question 1 is affirmative, to the best of your knowledge state the following information for each such interest owned:
 - a. The nature of your interest in the real property Primary Residence / Homeowner
 - b. The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets)
820 Hazel St, Birmingham MI 48009
 - c. The property's permanent real estate tax identification number Parcel Number 08-19-36-233-001
3. To the best of your knowledge, do you or a member of your immediate family own five percent (5%) or more of any business entity located in the City of Birmingham? No
4. If your answer to question 3 is in the affirmative, state the following, to the best of your knowledge:
 - a. The name of the entity _____
 - b. The address of the entity _____
 - c. The nature of your relationship to the entity _____
 - d. The date relationship commenced _____

5. To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit that is not reported in the prior answers? No
6. To the best of your knowledge, have you or a member of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions?
No

If so, supply the following information for each donee or donor:

NAMES OF DONOR/DONEE	ADDRESS	DATE GIFT RCVD/DONATED	NATURE OF GIFT

"I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."



Signature of city official or employee

Date

Subscribed and sworn to before me this 21 day of December, 2020
Notary Public
Acting in the County of Macomb, Michigan


Signature of Notary
My commission expires Sep. 4 2026

ABRIAL HAUFF
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Sep 4, 2026
ACTING IN COUNTY OF

FOR OFFICE USE ONLY	
Accepted by <u>Abrial Hauff</u>	Date <u>12/21/2020</u>



**AFFIRMATION OF SUPPORT
OF THE CITY CHARTER AND CODE OF ORDINANCES**

Resolution 09-261-17, adopted by the Birmingham City Commission on September 25, 2017 requires an affirmation of support of the City of Birmingham Charter and Code of Ordinances as a supplemental document to be signed by appointed and elected officials along with the Ethics Affidavit and Disclosure statement.

Date 12/19/2020

Name Samuel Oh

Position/Board Triangle District Corridor Improvement Authority

I do solemnly swear (or affirm) that I will support the City of Birmingham Charter and Code of Ordinances in the performance of the duties of my office.


Signature

Date

FOR OFFICE USE ONLY
Accepted by Heidi Hauff Date 12/21/2020

STATE OF MICHIGAN
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

The planning Board

according to the best of my ability.

Signed [Signature]

Subscribed and sworn to before me this 17 day of Dec 2020

[Signature]
City Clerk

STATE OF MICHIGAN
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

Birmingham Triangle District Corridor
Improvement Authority

according to the best of my ability.

Signed [Signature]

Subscribed and sworn to before me this 21 day of December 2020

[Signature]
City Clerk

STATE OF MICHIGAN
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

The Board of Review

according to the best of my ability.

Signed [Signature]

Subscribed and sworn to before me this 21 day of December 2020

[Signature]
City Clerk

- Number Two merits inclusion in terms of its effects neighborhood cohesion.

Public Comment

Samuel Oh, resident and member of the Corridor Improvement Authority, spoke on behalf of his neighborhood group in the Triangle. He expressed concerns about the speed and density of traffic, about the process of appointments for the Corridor Improvement Authority, and about potentially increasing density in the Triangle. He requested that a park or open space be considered for the Triangle.

Chair Clein clarified that:

- The Plan itself makes recommendations but does not rezone properties; and,
- The recommendations made for the Triangle in the Plan align with the Triangle Plan which was adopted by the City in 2007.

Mr. Oh reiterated his belief that the Plan rezoned properties in the Triangle to a higher density.

David Bloom said the Plan should provide more clarity on how a Master Plan influences zoning, noting that the process may confuse some residents. He advocated for clarity in the Plan as to whether there is insufficient parking in the City, recommended public engagement on the Plan's recommendations, raised concerns about having cafes in the parks, and said there should be clarity regarding whether a mezzanine is considered a 'floor' in describing building heights.

Jack Reinhardt, Managing Partner of the 555 Building, expressed concern about the S. Old Woodward project. He said he had not received notice of discussions of the S. Old Woodward project.

Chair Clein clarified that the present topic before the Board was the Master Plan.

Mr. Williams said Mr. Reinhardt's comments regarding the S. Old Woodward project would be more appropriately directed to the Commission.

Mr. Reinhardt then expressed concern about the loss of parking in the S. Old Woodward area.

2. Outdoor Dining Standards (previously Item J1)

PD Dupuis introduced the item.

Mr. Share recommended in Article 4, Section 4.44(B), "or by the Planning Division at the discretion of the Planning Director" would be changed to "or by the Planning Division at the discretion of the Planning Board", and that "throughout the year with a valid Outdoor Dining License" be removed from Article 4, Section 4.44(B)(5).

Mr. Jeffares and Chair Clein said the 'written permission' referenced in Article 4, Section 4.44(B)(4) should require renewal yearly and should be submitted to the City as part of the Outdoor dining patio renewal process. Chair Clein recommended Staff determine where best to include that as part of the policy.



MEMORANDUM

City Clerk's Office

DATE: March 15, 2022

TO: Thomas M. Markus, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Triangle District – Corridor Improvement Authority

The Birmingham Triangle District Corridor Improvement Authority (BTDCIA) was created by resolution that was adopted by the City Commission on November 10, 2008.

In the resolution section six clearly outlines the makeup of the board.

6. Board of Directors. The Authority shall be under the supervision and control of the Board. The Board shall consist of the Chief Executive Officer, or his or her assignee, and six additional members. Members shall be appointed by the Chief Executive Officer, subject to approval by the City Commission. Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area. Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area. Members shall be appointed to serve for a term of four years, except that of the members first appointed, an equal number, as near as is practicable, shall be appointed for terms of 1 year, 2 years, 3 years, and 4 years. A member shall hold office until the member's successor is appointed and qualified. Before assuming the duties of office, a member shall qualify by taking and subscribing to the constitutional oath of office. An appointment to fill a vacancy shall be made by the Chief Executive Officer for the unexpired term only. Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. The Chairperson of the Board shall be elected by the Board. The Board shall adopt Bylaws governing its procedures subject to the approval of the City Commission.

In summary, the board makeup includes:

- Members appointed by the Mayor subject to approval by the City Commission
- Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area
 - The majority of 7 is 4
- Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area
 - May have up to 2 residents
- The makeup of the board could be
 - 4 members with a business interest or ownership in property and 2 residents
 - or
 - 5 members with a business interest or ownership and 1 resident

Historically this board has suffered from vacancies and has not had a full roster, meaning 6 members plus a commissioner, 7 total, since December 13, 2016. Many applicants for this board are ineligible because they do not have a business interest or ownership within the Development Area or qualify as a resident of the Development Area.

The current makeup of the board includes:

- Commissioner Baller
- 2 Residents
- 2 Persons with Business Ownership/Interest

Before the scheduled board appointment interviews on January 24, 2022 City Staff had only confirmed that the applicants were residents or property owners in the Development Area with respect to the map provided of the Triangle District. Both applicants were residents. Staff missed the critical point in the 2008 resolution that states:

Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area.

When staff reviewed the item, staff determined that both applicants were residents and that there were already 2 resident members on the board. The agenda packet was amended with a memo to explain why the applications must be held and considered at a later time in order to comply with the member requirements of the resolution. The two vacancies on the board at this point must be filled by applicants with a business interest or ownership in the Development Area. Clerk's office staff informed the applicants of the situation and the amended agenda packet was released.

The Clerk's office is currently holding the resident applications until qualified applicants with business ownership/interest are submitted in order fulfill the requirements as prescribed by the November 10, 2008 resolution.

At the March 9, 2022 Planning Board meeting where public comment was taken on the 2040 Master Plan study session item. Samuel Oh stated, "We are very concerned that um when Dr. Falucca applied to the CIA board, and it was goi-, and I know you guys don't have oversight of this, but I think its very important for you to know, he is a resident of the triangle district and he was going to get voted in, and it was parcipituously cancelled, and we were told as residents, and Dr. Falucca was told that uh a a change in the by-laws was instigated in which previously there were 7 board members to be allowed, and if Dr. Falucca got voted in that would have made 3 residents and 3 commercial representation, and that doesn't build um transparency or confidence with with the with the neighborhood. Dr. Falucca asked that his uh application would be not be declined but held until another position was open, and his position, his application was not even considered for an alternate, um that really upsets the residents because that doesn't show transparency or or even like um cooperations amongst the resident voters of the area and that really builds a lot of distrust. I would like you to take that into consideration because the communication in which um the urban planning of the master planning of the triangle district seems to be just like a bulldozing over of the residential areas in order to increase taxable income for the city by increasing the commercial er maximizing the commercial values around and um we don't appreciate that in fact we have a petition already being signed right now a round and we would like to know where we could uh submit that petition to the urban planning committee and also to the City Commissioners."

Key facts to point out regarding the statement by Mr. Oh:

- There was no guarantee that Mr. Falucca was going to be appointed until the Commission conducted interviews and made nominations.
- There has not been any new resolution which would change the makeup of the board.
- Both residential applications from the January 24, 2022 appointments are being held until there is a vacancy of a resident position available on the board.
- The applications were not declined.
- Currently there are no alternate positions for the BTDCIA.

ATTACHMENTS:

- Agenda Packet Information for the Board Appointments on January 24, 2022
- March 9, 2022 Planning Board Meeting Comments From Samuel Oh start at **1:29.01**
<https://vimeo.com/event/3472/videos/681164702/>



CITY MANAGER'S REPORT

March 2022

City Manager's Office

Setting the Record Straight

Birmingham Triangle District Corridor Improvement Authority (BTDCIA)

At the Planning Board meeting held on March 9, 2022 a resident made comments regarding the process and makeup of the BTDCIA board along with the potential impact of rezoning on the neighborhood surrounded by the Triangle District as outlined in the draft of the 2040 plan. Linked below is a detailed memo and supporting documents that further explain the resident's concerns, specifically in regards to the makeup of the board and the parameters that were passed by resolution # 11-363-08 of the City Commission on November 10, 2008. There have not been any changes to the makeup of this board since it was established in 2008. No alternate positions for the BTDCIA have been created to date by resolution of the City Commission. Most importantly, the board must have a majority of its members identified as persons having an ownership or business interest in property located in the Development Area. Download the [memo regarding this here](#).

Currently the board is comprised of the following members:

- Commissioner Baller
- Two persons having an ownership or business interest in property located in the Development Area
- Two residents of the Development Area as defined in the 2008 resolution

To maintain the requirements of the resolution passed, the board must have:

Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area

The City Commission will be seeking applicants who are persons having an ownership or business interest in property located in the Development Area.



2040

Clarifications Pertaining to the Triangle District

Are there any current proposals to increase density in the Triangle District?

No. The most recent plan associated with the area is the Triangle District Urban Design Plan, which was adopted in 2007. No changes are proposed to the Triangle District Urban Design Plan at this time.

Has a Triangle District Redevelopment Plan been created and approved on a provisional basis, with final approval soon?

There is no "Triangle District Redevelopment Plan" being considered or approved by the City at this time.

The City has recently amended its Tax Increment Financing ("TIF") Plan through the Corridor Improvement Authority, the purpose of which is to help leverage funding for the construction of a parking structure in the Triangle District. The TIF Plan does not impact the height, massing or permitted uses currently in place within the Triangle District.

The City is currently working on an updated citywide comprehensive plan, known as the Birmingham 2040 Plan. A comprehensive plan is a document designed to guide the future actions of the entire community. It presents a citywide vision for the future, with long-range goals and objectives for all activities that affect the local government. After three years of public engagement and review, the Draft 2040 Plan is expected to be sent to the consultant team shortly for revisions toward a third and final draft.

Does the Draft 2040 Master Plan call for any increases in building height or massing in the Triangle District?

No. The Draft 2040 Plan does not recommend any additional building height or massing in the Triangle District. At present, the Triangle Overlay District zoning consists of three mixed-use overlay districts (MU3, MU5, MU7), and one attached single family zoning district (ASF3). These zoning districts have been in place since 2007. The parking related recommendations contained within the Draft 2040 Plan are taken directly from the Triangle District Urban Design Plan from 2007.

Do existing or proposed zoning regulations allow 4-story structures to "bump up" immediately against single family homes within the Triangle District?

No. The existing zoning regulations do not allow 4-story structures to "bump up" immediately against single-family homes within the Triangle District. The current permissible height of buildings in the mixed-use zones vary from 2- and 3-story minimums to 9 stories maximum in the MU7 zone at the tallest. The R2 single-family zone located in the center of the Triangle District is adjacent to only MU3 zoned properties, which have a 3-story maximum building height within 100 feet of the residential boundary. There are no changes proposed to the existing height regulations in the Triangle District.

Are there step back provisions on all commercial buildings and structures that would be adjacent to or facing residential areas?

Yes. There are currently step back provisions within the Zoning Ordinance that require additional bonus stories to be stepped back at a 45-degree angle from the top story allowed by right without the height bonus. In addition, bonus stories are not permitted in the Triangle District within 100 feet from a single-family residential zoning district, which offers an additional step back.

Are there plans to include more open space (such as a neighborhood playground, dog park, etc.) in the Triangle District?

Yes. The Triangle District Urban Design Plan recognized a need for a park and recommended that the City pursue the Worth Street extension, which included the creation of Worth Park as an open space feature for the area. The Draft 2040 Plan explores many strategies for open space in the Triangle District. One such recommendation is the pursuance of Worth Park in the center of the Triangle District. Another recommendation in the Draft 2040 Plan is to "create subdivision and zoning standards to encourage redevelopment of the Adam's Square shopping center, offering significant development capacity in exchange for a public open space and public parking."



2040

Are there plans to enhance the safety and walkability for school-aged children in the Triangle District?

Yes. The Triangle District Urban Design Plan contains many specific recommendations to help reduce speeds on local streets, improve safety for vehicles and pedestrians, widen sidewalks and ensure proper access to residences and businesses.

In addition, safety and walkability are hallmarks of the Draft 2040 Plan. Throughout the Draft 2040 Plan, there are recommendations and emphasis placed throughout with tactics including, but not limited to, creating safer crosswalks at key locations, adding multimodal enhancements in seam areas to help safely connect neighborhoods across larger roads, and even lane reduction recommendations for Woodward Avenue, which the City is currently pursuing.

What is the status of the Citywide Master Plan?

The Planning Board completed its thorough review of the second draft on March 9, 2022. A summary of the review and a prioritization will be brought to the City Commission at a joint meeting on April 18, 2022. Following this meeting, requested changes to the second draft will be incorporated into a final draft of the 2040 Plan to be considered later this year.

How can I learn more about the Citywide Master Plan and participate in future meetings?

Visit www.thebirminghamplan.com for all documents relating to the Citywide Master Plan, including the consultant's presentation slides, relevant data, surveys, documents and an email communication option to send comments directly to the planning team. Recordings of Planning Board meetings are available at www.bhamgov.org/planningboard.

Residents are encouraged to follow the city on social media and sign up for the Citywide Master Plan Constant Contact group at www.bhamgov.org/enews



Case No. _____
(Assigned by clerk)

REQUEST FOR ADVISORY OPINION

The Procedural Rules of the Board of Ethics allow a city official or employee, the City Commission, or another city commission, board or committee, as defined in the Code of Ethics ("the requesting party"), to request an advisory opinion as to whether the requesting party's conduct or anticipated conduct, or that of a city official, employee, commission, board or committee under the requesting party's authority, conforms to the Code of Ethics. The party whose conduct is sought to be reviewed, if it is someone other than the requesting party, is called the "subject party."

All advisory opinions will be communicated to the city commission and will be published on the city's website at www.bhamgov.org.

Written requests are subject to disclosure under the Freedom of Information Act.

Name Bert Koseck Phone Number (248) 302-4018

Address 2441 Dorchester, Birmingham, MI 48009
(Number, Street, City, State, Zip)

Position or Board (If Applicable) Planning Board Member

- A. State each question upon which an opinion is desired. Attach additional sheets of paper if the space provided below is not sufficient.
- B. State all of the facts giving rise to each question presented.
- C. If available, provide all relevant statutory provisions, case law, prior opinions of the Ethics Board, and other authorities.

NOTE: Although the foregoing criteria are subject to exception when the circumstances warrant, a request which does not meet these criteria may be returned and the requestor asked to resubmit the request in an appropriate form.

Please return requests to: City Clerk's Office, City of Birmingham
151 Martin, P.O. Box 3001, Birmingham, MI 48012

Revised 8/16/12

FOR OFFICE USE ONLY

Accepted by _____ Date _____



April 25, 2022

City of Birmingham Ethics Board
City of Birmingham
151 Martin Street
Birmingham, MI 48009

Re: Advisory Opinion

Dear Members of the Board:

It has come to my attention that Mr. Koseck, who is a Planning Board member for the City of Birmingham, has been working as an architect on behalf of Cannelle Patisserie located at 159 N. Eton St. Mr. Koseck has been on the Planning Board since October of 2009, and, therefore, is a City official or employee as defined at Sec. 2-322 of the Birmingham City Code of Ethics Ordinance.

"City official or employee means a person elected, appointed or otherwise serving in any capacity with the city in any position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty."

Mr. Koseck began talking to the City Planning Department to discuss the process for proposed changes to the property, including the chance that it would have to have a site plan review before the Planning Board. He was also in discussions with the Planning Department concerning the City's policy with respect to building over a City utility easement. As time progressed, there was quite a bit of back and forth regarding the site plan review administratively and site plan review with the Planning Board. In January of 2022, the City staff conducted a site plan review for the application and discussed the project again with Mr. Koseck.

On approximately January 20, 2022, the Planning Department, through Mr. Brooks Cowan, had discussions with Mr. Koseck regarding the City's review. Mr. Koseck was argumentative telling Mr. Cowan what the Engineering Dept. said regarding what he could and could not do to the site. Most notably, however, Mr. Koseck told both Ms. Jana Ecker, Assistant City Manager, and Mr. Cowan that he showed his plans to Planning Board members and civil engineers, Scott Clein and Jason Emerine. Mr. Koseck told employees that Mr. Clein and Mr. Emerine believe the City should allow Mr. Koseck's proposal to be built above the utility easement. At this point, it had not been determined with finality whether Mr. Koseck would have to go before the Planning Board, and



the fact of the matter is he involved Planning Board members' input from behind the scenes, a Board of which he is an active member, to support his case which could be a violation of the Ethics Code Sec. 2-323(1), (2), (3) and Sec. 2-324(a)(5), (8) and subsection b(2).

There were continued efforts from Mr. Koseck to push the staff, with almost daily or every other day emails, to obtain administrative approval for the Cannelle project, attempting to bypass the need for the Planning Board review. He even requested a refund for the final site plan review application with the Planning Board which he is aware, as a Planning Board member, is not done. Frequently, Mr. Koseck was angry, raising his voice, and badgering the staff. Mr. Koseck went as far as to say, "You know I talked to Jason Emerine and Scott Klein about this who are professional engineers, and they think what engineering and HRC are doing is bullshit." Again, in potential violation of the aforementioned sections. Mr. Koseck, by speaking to Planning Board members before a public hearing did so in an attempt to gain a favorable decision, certainly in potential violation of Sec. 2-324(8). Many of the staff members felt as though they were being pressured to change their opinions for Mr. Koseck because he is on the Planning Board, again in potential violation of Sec. 2-324(8).

In reviewing the Code of Ethics, I am contacting the Ethics Board of the City of Birmingham to request an Advisory Opinion regarding the conduct of Mr. Koseck. Sec. 2-320(3), makes it clear that one is not to use a public office for personal gain. Further, recognizing Sec. 2-321 which states:

"City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be above reproach."

I believe the Code of Ethics has been written to ensure that every person acting on behalf of the City always does so with the utmost integrity and not have even the appearance of impropriety. I am concerned that Mr. Koseck is using his position as a Planning Board member in order to put through his project at Cannelle Patisserie without going through the proper procedure, thereby using his position as a member of the Board, duly appointed by the Commission, and as such may be in violation of Sec. 2-321, Sec. 2-323(1), (3), (4) and (5). His actions towards City staff and involving other Planning Board members behind the scenes are concerning to the City, and thereby in potential violation of Sec. 2-322 of the Birmingham Code of Ethics. Furthermore, Sec. 2-324(a)(2) states:

"(2) No official or employee of the city shall represent his or her personal opinion as that of the city."



By pursuing the staff to obtain administrative approval and going behind the scenes to other Planning Board members before a public hearing, Mr. Koseck is in potential violation of Sec. 2-324(a)(8), by using his official position. It could be argued that he may also be in violation of Sec. 2-324(a)(9)b. in that he is acting in a way that is not in compliance with the duty of his Board, but instead is utilizing his position in order to act against the Planning Board, for which he has been sworn to represent and make decisions on behalf of the Board (Attachment 1).

In conclusion, I bring the aforementioned facts to the Ethics Board requesting an Advisory Opinion as to whether or not sections of the Birmingham City Code of Ethics have potentially been violated by Mr. Koseck's actions.

I look forward to any questions you may have, and I will make myself available for a meeting as requested.

I declare the foregoing information is true and accurate to the best of my knowledge.

A handwritten signature in black ink, reading "Thomas M. Markus". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Thomas M. Markus, Birmingham
City Manager
tmarkus@bhamgov.org
(248) 530-1809

Date: 4-27-22

Attachment:

1. Affidavit

STATE OF MICHIGAN
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

Historic District Commission & Design Review Board

according to the best of my ability.

[Signature]
Signed

Subscribed and sworn to before me this 21st day of Sept, 2009

[Signature]
City Clerk Designee

STATE OF MICHIGAN
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

Public Arts Board

according to the best of my ability.

[Signature]
Signed

Subscribed and sworn to before me this 12th day of Oct, 09

[Signature]
City Clerk

STATE OF MICHIGAN
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

Planning Board

according to the best of my ability.

[Signature]
Signed

Subscribed and sworn to before me this 12th day of Oct, 09

[Signature]
City Clerk